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(1)

**IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.**

**WRIT PETITION NO. 03 OF 2005**

**PETITIONER** : Manohar Lal, aged about 30 years, S/o Sukul Ram, Caste Bharia (ST) R/o Village Kurkai, Gram Panchayat Kurkai Tah. Pendra Distt. Bilaspur, (C.G.)

B.R. No. 26/05
Presented by Shri Y. Chaturvedi
Date 04-01-05

**V E R S U S**

**RESPONDENTS** : 1. The Returning Officer, Panchayat Election Janpat Panchyat Pendra, Distt. Bilaspur C.G.

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A. G. Bilaspur

2. State Election Commission, Through the Secretary Raipur , (C.G.)

3. State of C.G., Through the Secretary Schedule Caste and Scheduled Tribe D.K.S Bhawan Raipur, C.G.

**WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/CERTIORARI ETC. OR DIRECTION/ORDER IN THE LIKE NATURE ETC.**

(41)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 05/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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**12.1.2005**

Shri Rajesh Pandey, counsel for the petitioner.

Shri Pramod Verma, Additional Advocate General for respondent Nos. 1 to 3.

Learned counsel for the respondents seeks a week time to file the return.

Time is allowed.

Looking to the urgency that the elections for the post of Sarpanch of Gram Panchayat, Bacharwar is going to be held on 15.1.2005 arguments heard on M.W.P. No.05/2005.

By this application the petitioner has prayed for staying the operation of order dated 31.12.2004 (Annexure P-1) passed by respondent No.1 whereby the petitioner's nomination for the post of Sarpanch of Gram Panchayat Bacharwar has been rejected on the ground that she does not belong to Scheduled Tribes.

Learned counsel for the petitioner submitted that the petitioner belongs to Bhariya caste and same is included in the Scheduled Tribes category at Sr. No.5 vide presidential order published in M.P. Re-organization Act, 2000 in Schedule-IV. Counsel further submitted that the petitioner's caste certificate is Annexure P-2 and without looking into this, the Returning Officer has rejected the petitioner's nomination paper on the non-existent and irrelevant grounds. Counsel further submitted that even the nomination papers of similarly situated persons namely Lekhram Bharia & Mohitram Bharia submitted for various offices of Panchayats have been accepted considering them as Scheduled Tribes. Therefore, the impugned order is liable to be stayed.

(42)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ..... **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

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On the other hand learned Additional Advocate General for the State argued that in view of the preliminary objections filed on behalf of respondent No.3 and in view of the provisions of Article 243(O) of the Constitution of India since the election process is in currency, therefore, interference under Article 226 by this Court is not called for and proper remedy available to the petitioner is to file election petition.

Having heard learned counsel for the parties and having regard to the judgment of the Hon'ble Apex Court in the matter of **Election Commission of India Through Secretary Vs. Ashok Kumar and ors** reported in **JT 2000 (9) SC 529** in which the Constitution Benches judgments in Ponnuswami's case and also in Mohinder Singh Gill's case were considered and held that the bar under Article 329 of the Constitution which is in perimateria of Article 243(O) of the Constitution cannot be pressed into service against the entertainment of the writ petition under Article 226 of the Constitution where the court to subserves the progress of election, anything done towards completing or in furtherance of the election proceedings and facilitates the completion of election and where judicial review is exercised against the decision of statutory bodies such as on a case of mala fide or arbitrary exercise of powers and where the order does not interrupt, obstruct or delay the process of election. The judicial intervention is available, where the assistance of court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein.

In the light of above law laid down by the Hon'ble Apex Court in Ashok Kumar's case, if we look into the present case the petitioner

43

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

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while filing her nomination categorically mentioned in the nomination papers that she belongs to Bhariya caste, therefore, she belongs to Scheduled Tribes. Caste certificate to this effect was issued in her favour by the Naib Tehsildar, Pendra Road and in the presidential order published in the M.P. Reorganization Act, 2000 in Scheduled-IV at Sr.No.5 Bhariya caste has been shown to be included in Scheduled Tribes. Therefore, the order impugned has been passed totally on irrelevant & non-existent grounds and in an arbitrary manner and as has been held by the Hon'ble Apex Court in the matter of Ashok Kumar's case (Supra) that access to court which is an important right vested in every citizen implies the existence of the power of the court to render justice according to law and the power of judicial review is basic structure of the Constitution.

In view of the above, the preliminary objection raised by the respondent concerned is not sustainable, as the impugned order, as mentioned above, is wholly unjustified, based on the irrelevant & non-existent grounds and arbitrary. The elections for the post of Sarpanch is scheduled to be held on 15.1.2005, time is still there and if the name of the petitioner is included in the contestants list in accordance with law then it is not going to create any interruption or hindrance in the election process. As such, I am of the opinion that it is a fit case in which the interference by this Court under Article 226 of the Constitution is warranted. Accordingly, the application (M.W.P. No.06/2005) is allowed and it is directed that the effect and operation of the impugned order dated 29.12.2004 (Annexure P-1) passed by respondent No.1 shall remain stayed and respondents are directed to

(44)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक (पूर्वानुबद्ध)

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| | include the name of the petitioner in the list of contesting candidates and proceed with the election in accordance with law.<br>In view of this order, I.A. No.26/2005 stands disposed of.<br>Certified copy as per rules.<br>**Sd/-**<br>**L.C. Bhadoo**<br>**Judge** | |

Roshan/-